

[Third Reprint]

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 205

STATE OF NEW JERSEY
210th LEGISLATURE

ADOPTED SEPTEMBER 30, 2002

Sponsored by:

Assemblyman GARY L. GUEAR, SR.

District 14 (Mercer and Middlesex)

Assemblyman JOHN J. BURZICHELLI

District 3 (Salem, Cumberland and Gloucester)

Co-Sponsored by:

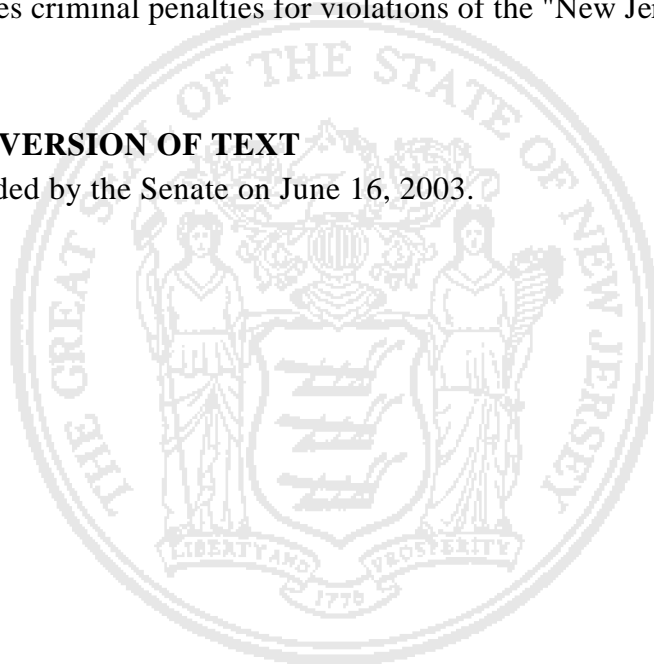
Assemblymen Egan, Eagler, Conners, Assemblywomen Greenstein, Perez-Cinciarelli, Stender, Senators Suliga, Coniglio, Turner and Assemblyman Conaway

SYNOPSIS

Establishes criminal penalties for violations of the "New Jersey Prevailing Wage Act"

CURRENT VERSION OF TEXT

As amended by the Senate on June 16, 2003.



(Sponsorship Updated As Of: 1/13/2004)

1 AN ACT establishing criminal penalties for certain violations of the
2 "New Jersey Prevailing Wage Act" and amending P.L.1963, c.150
3 and P.L.1999, c.440.

4
5 BE IT ENACTED by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. Section 11 of P.L.1963, c.150 (C.34:11-56.35) is amended to
9 read as follows:

10 11. (a) Any employer who willfully hinders or delays the
11 commissioner in the performance of his duties in the enforcement of
12 this act, or fails to make, keep, and preserve any records as required
13 under the provisions of this act, or falsifies any such record, or refuses
14 to make any such record accessible to the commissioner upon demand,
15 or refuses to furnish a sworn statement of such record or any other
16 information required for the proper enforcement of this act to the
17 commissioner upon demand, or pays or agrees to pay wages at a rate
18 less than the rate applicable under this act or otherwise violates any
19 provision of this act or of any regulation or order issued under this act
20 shall be guilty of a disorderly persons offense and shall, upon
21 conviction therefor, be fined not less than \$100.00 nor more than
22 \$1,000 or be imprisoned for not less than 10 nor more than 90 days,
23 or by both such fine and imprisonment. Each week, in any day of
24 which a worker is paid less than the rate applicable to him under this
25 act and each worker so paid, shall constitute a separate offense.

26 (b) As an alternative to or in addition to any other sanctions
27 provided by law for violations of any provision of P.L.1963, c.150
28 (C.34:11-56.25 et seq.), when the Commissioner of Labor finds that
29 an employer has violated that act, the commissioner is authorized to
30 assess and collect administrative penalties, up to a maximum of
31 ¹[\$250] \$2,500¹ for a first violation and up to a maximum of ¹[\$500]
32 \$5,000¹ for each subsequent violation, specified in a schedule of
33 penalties to be promulgated as a rule or regulation by the
34 commissioner in accordance with the "Administrative Procedure Act,"
35 P.L.1968, c.410 (C.52:14B-1 et seq.). When determining the amount
36 of the penalty imposed because of a violation, the commissioner shall
37 consider factors which include the history of previous violations by the
38 employer, the seriousness of the violation, the good faith of the
39 employer and the size of the employer's business. No administrative
40 penalty shall be levied pursuant to this section unless the

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate SLA committee amendments adopted May 8, 2003.

² Senate floor amendments adopted May 29, 2003.

³ Senate floor amendments adopted June 16, 2003.

1 Commissioner of Labor provides the alleged violator with notification
 2 of the violation and of the amount of the penalty by certified mail and
 3 an opportunity to request a hearing before the commissioner or his
 4 designee within 15 days following the receipt of the notice. If a
 5 hearing is requested, the commissioner shall issue a final order upon
 6 such hearing and a finding that a violation has occurred. If no hearing
 7 is requested, the notice shall become a final order upon expiration of
 8 the 15-day period. Payment of the penalty is due when a final order
 9 is issued or when the notice becomes a final order. Any penalty
 10 imposed pursuant to this section may be recovered with costs in a
 11 summary proceeding commenced by the commissioner pursuant to
 12 ["the penalty enforcement law" (N.J.S.2A:58-1 et seq.)] the "Penalty
 13 Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).
 14 Any sum collected as a fine or penalty pursuant to this section shall be
 15 applied toward enforcement and administration costs of the Division
 16 of Workplace Standards in the Department of Labor.

17 (c) When the Commissioner of Labor finds that the employer has
 18 violated provisions of P.L.1963, c.150 (C.34:11-56.25 et seq.), the
 19 commissioner may refer the ²[case] matter² to the ²[office of the]²
 20 Attorney General ²or his designee² for ²[further]² investigation and
 21 prosecution. ²Nothing in this subsection shall be deemed to limit the
 22 authority of the Attorney General to investigate and prosecute
 23 violations of the New Jersey Code of Criminal Justice, nor to limit the
 24 commissioner's ability to refer any matter for criminal investigation or
 25 prosecution.²
 26 (cf: P.L.2002, c.95, s.1)

27
 28 2. Section 97 of P.L.1999, c.440 (C.2C:21-34) is amended to read
 29 as follows:

30 97. a. A person commits a crime if the person knowingly submits
 31 to the government any claim for payment for performance of a
 32 government contract knowing such claim to be false, fictitious, or
 33 fraudulent. If the claim submitted is for \$25,000.00 or above, the
 34 offender is guilty of a crime of the second degree. If the claim exceeds
 35 \$2,500.00, but is less than \$25,000.00, the offender is guilty of a crime
 36 of the third degree. If the claim is for \$2,500.00 or less, the offender
 37 is guilty of a crime of the fourth degree.

38 b. A person commits a crime if the person knowingly makes a
 39 material representation that is false in connection with the negotiation,
 40 award or performance of a government contract. If the contract
 41 amount is for \$25,000.00 or above, the offender is guilty of a crime of
 42 the second degree. If the contract amount exceeds \$2,500.00, but is
 43 less than \$25,000.00, the offender is guilty of a crime of the third
 44 degree. If the contract amount is for \$2,500.00 or less, the offender
 45 is guilty of a crime of the fourth degree.

46 c. ³[Any] An³ employer ³[who] commits a crime if the employer³

1 knowingly pays one or more employees employed in public work
2 subject to the provisions of P.L.1963, c.150 (C.34:11-56.25 et seq.)
3 at a rate less than the rate required pursuant to that act ³ [, and submits
4 a claim to a governmental body for payment for the public work, shall
5 be deemed to have made a false material representation in connection
6 with the negotiation, award or performance of a government contract
7 for the purposes of subsection b. of this section ¹ and shall be subject
8 to the provisions of subsection b. of this section, except that if]. If³
9 the contract amount is for \$75,000.00 or above, the employer is guilty
10 of a crime of the second degree; if the contract amount exceeds
11 \$2,500.00, but is less than \$75,000.00, the employer is guilty of a
12 crime of the third degree; and if the contract amount is for \$2,500.00
13 or less, the employer is guilty of a crime of the fourth degree ¹ . In
14 addition, the employer shall be deemed to have caused loss to the
15 employees in the amount by which the employees were underpaid and
16 shall be subject to the provisions of N.J.S.2C:43-3 regarding fines and
17 restitution to victims and be subject to other pertinent provisions of
18 Title 2C of the New Jersey Statutes, including, but not limited to,
19 N.J.S.2C:43-4, 2C:43-6 and 2C:44-1.
20 (cf: P.L.1999, c.440, s.97).

21

22 3. This act shall take effect immediately.